

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 09-056
		)	
3	State of New Hampshire Banking	)	
		)	Order to Show Cause
4	Department,	)	
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	Florida Mortgage Network of Collier	)	
		)	
8	County, Inc, and Joseph F. Mulligan,	)	
		)	
9	Respondents	)	

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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 397-A and RSA 541-A.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Banking Department of the State of New  
15 Hampshire (hereinafter the "Department") has the authority to issue an order  
16 to show cause why license revocation and penalties for violations of New  
17 Hampshire Banking laws should not be imposed.

18 Pursuant to RSA 397-A:18, the Department has the authority to issue a  
19 complaint setting forth charges whenever the Department is of the opinion  
20 that the licensee or person over whom the Department has jurisdiction is  
21 violating or has violated any provision of RSA Chapter 397-A, or any rule or  
22 order thereunder.

23 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or  
24 rescind such orders as are reasonably necessary to comply with the  
25 provisions of the Chapter.

1 Pursuant to RSA 397-A:21, the Commissioner has the authority to  
2 suspend, revoke or deny any license and to impose administrative penalties  
3 of up to \$2,500.00 for each violation of New Hampshire banking law and  
4 rules.

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
6 that is or may be an unfair or deceptive act or practice under RSA 358-A and  
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of  
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
9 Commissioner may hold hearings relative to such conduct and may order  
10 restitution for a person or persons adversely affected by such conduct.

11 **NOTICE OF RIGHT TO REQUEST A HEARING**

12 The above named Respondents have the right to request a hearing on  
13 this Order to Show Cause, as well as the right to be represented by counsel  
14 at each Respondent's own expense. All hearings shall comply with RSA 541-A.  
15 Any such request for a hearing shall be in writing, and signed by the  
16 Respondent or the duly authorized agent of the above named Respondent, and  
17 shall be delivered either by hand or certified mail, return receipt  
18 requested, to the Banking Department, State of New Hampshire, 53 Regional  
19 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
20 10 days of the Department's receipt of the request. If the Respondent fails  
21 to appear at the hearing after being duly notified, such person shall be  
22 deemed in default, and the proceeding may be determined against the Respondent  
23 upon consideration of the Order to Show Cause, the allegations of which may be  
24 deemed to be true.

25 If any of the above named Respondents fails to request a hearing within

1 30 calendar days of receipt of such order or reach a formal written and  
2 executed settlement with the Department within that time frame, then such  
3 person shall likewise be deemed in default, and the orders shall, on the  
4 thirty-first day, become permanent, and shall remain in full force and effect  
5 until and unless later modified or vacated by the Commissioner, for good cause  
6 shown.

7 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

8 The Staff Petition dated May 13, 2009 (a copy of which is attached  
9 hereto) is incorporated by reference hereto.

10 **ORDER**

11 WHEREAS, finding it necessary and appropriate and in the public  
12 interest, and consistent with the intent and purposes of the New Hampshire  
13 banking laws, and

14 WHEREAS, finding that the allegations contained in the Staff Petition,  
15 if proved true and correct, form the legal basis of the relief requested,

16 It is hereby ORDERED, that:

- 17 1. Respondent Florida Mortgage Network of Collier County  
18 ("Respondent Florida Mortgage Network") shall show cause why  
19 penalties in the amount of \$7,500.00 should not be imposed  
20 against it;
- 21 2. Respondent Joseph F. Mulligan ("Respondent Mulligan") shall  
22 show cause why penalties in the amount of \$12,500.00 should  
23 not be imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition  
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 accrued fine of \$3,950.00 for failing to provide examination  
2 materials should not be paid to the Department;

3 4. Respondents shall be jointly and severally liable for the  
4 above amounts alleged in Paragraphs 1 through 3 above;

5 5. The above named Respondents shall show cause why, in addition  
6 to the penalties listed in Paragraphs 1 through 4 above,  
7 Respondent Florida Mortgage Network's license should not be  
8 revoked.

9 It is hereby further ORDERED that:

10 6. Along with the administrative penalties listed for the above  
11 named Respondents, the outstanding sum of \$3,950.00 shall be  
12 immediately paid; and

13 7. Failure to request a hearing within 30 days of the date of  
14 receipt or valid delivery of this Order shall result in a  
15 default judgment being rendered and administrative penalties  
16 imposed upon the defaulting Respondent(s).

17  
18 SIGNED,

19  
20 Dated: 05/13/09

\_\_\_\_\_  
21 /s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-056  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) May 13, 2009  
 )  
 6 and )  
 )  
 7 Florida Mortgage Network of Collier )  
 )  
 8 County, Inc, and Joseph F. Mulligan, )  
 )  
 9 Respondents )

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10 I. STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter  
12 "Department") alleges the following facts:

13 Facts Common on All Counts:

- 14 1. Respondent Florida Mortgage Network of Collier County, Inc  
 15 (hereinafter "Respondent Florida Mortgage Network") has been  
 16 licensed as a Mortgage Broker from at least February 21, 2008.
- 17 2. Respondent Joseph F. Mulligan (hereinafter "Respondent Mulligan")  
 18 is the 100% owner and President of Respondent Florida Mortgage  
 19 Network.

20 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

21 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

22 Files (1 Count):

23 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

24 Files (1 Count):

25 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

1 Department Inquiries (2 Counts):

- 2 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
3 herein.
- 4 4. The Department attempted to conduct an examination of Respondent  
5 Florida Mortgage Network on February 16, 2009.
- 6 5. On January 26, 2009, the Department sent the notice of examination  
7 to Respondent Florida Mortgage Network via U.S. Certified Mail  
8 Return Receipt requested, which Respondents received on February  
9 2, 2009.
- 10 6. With no response, on March 11, 2009, the Department sent the  
11 notice of examination to Respondent Florida Mortgage Network via  
12 U.S. Certified Mail Return Receipt requested and email. The  
13 email was return receipted on March 11, 2009 but the post office  
14 returned the certified letter to the Department on April 13,  
15 2009.
- 16 7. The Department made a third attempt on March 27, 2009 both by  
17 email and U.S. Certified Mail Return Receipt requested. The  
18 email was return receipted on March 27, 2009 and the Respondents  
19 received the certified letter on April 2, 2009.
- 20 8. The materials requested in the notice of examination were due on  
21 February 23, 2009, which is 21 days after the February 2, 2009  
22 delivery of the notice of examination.
- 23 9. To date, the Department has not received the examination materials  
24 nor have Respondents acknowledged the examination.
- 25 10. To date, fines have accrued for failing to provide the requested

1 files. The current fine to date is \$3,950.00 (\$50.00 a day x 79  
2 days) and still accruing.

3 **II. ISSUES OF LAW**

4 The staff of the Department alleges the following issues of law:

5 1. The Department realleges the above stated facts in Paragraphs 1  
6 through 10 as fully set forth herein.

7 2. The Department has jurisdiction over the licensing and regulation  
8 of persons engaged in mortgage banker or broker activities  
9 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

10 3. RSA 397-A:11,II provides that requested files and business records  
11 must be received by the Department within 21 calendar days of  
12 request. The licensee will be subject to a \$50.00 a day fine  
13 every day after the 21-day period the records are not produced.  
14 Respondents currently owe \$3,900.00. Each of the above named  
15 Respondents violated this statute on at least one occasion as  
16 alleged above.

17 4. RSA 397-A:12,III requires licensees to comply with examination  
18 requests with or without prior notice. All books, papers, files,  
19 related material, and records of assets shall be subject to the  
20 Department's examination. Each of the above named Respondents  
21 violated this statute on at least one occasion as alleged above.

22 5. RSA 397-A:12,VII provides that every person being examined, and  
23 all of the officers, directors, employees, agents, and  
24 representatives of such person shall make freely available to the  
25 Commissioner or his or her examiners, the accounts, records,

1 documents, files, information, assets, and matters in their  
2 possession or control relating to the subject of the examination  
3 and shall facilitate the examination. Each of the above named  
4 Respondents violated this statute on at least one occasion as  
5 alleged above.

6 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
7 of any licensee shall reply promptly in writing, or other  
8 designated form, to any written inquiry from the Department.  
9 Respondent Mulligan violated this provision on at least two  
10 occasions as alleged above.

11 7. RSA 397-A:17,I provides in part that the Commissioner may by  
12 order, upon due notice and opportunity for hearing, assess  
13 penalties or deny, suspend, or revoke a license or application if  
14 it is in the public interest and the applicant, respondent, or  
15 licensee, any partner, officer, member, or director, any person  
16 occupying a similar status or performing similar functions, or  
17 any person directly or indirectly controlling the applicant,  
18 respondent, or licensee: (a) has violated any provision of RSA  
19 Chapter 397-A or rules thereunder, or (b) has not met the  
20 standards established in RSA Chapter 397-A.

21 8. RSA 397-A:18,I provides that the Department may issue a complaint  
22 setting forth charges whenever the Department is of the opinion  
23 that the licensee or person over whom the Department has  
24 jurisdiction, has violated any provision of RSA 397-A or orders  
25 thereunder.



1 9. RSA 397-A:21,IV provides that any person who, either knowingly or  
2 negligently, violates any provision of Chapter 397-A, may upon  
3 hearing, and in addition to any other penalty provided for by  
4 law, be subject to an administrative fine not to exceed  
5 \$2,500.00, or both. Each of the acts specified shall constitute  
6 a separate violation, and such administrative action or fine may  
7 be imposed in addition to any criminal penalties or civil  
8 liabilities imposed by New Hampshire Banking laws.

9 10. RSA 397-A:21,V provides that every person who directly or  
10 indirectly controls a person liable under this section, every  
11 partner, principal executive officer or director of such person,  
12 every person occupying a similar status or performing a similar  
13 function, every employee of such person who materially aids in the  
14 act constituting the violation, and every licensee or person acting  
15 as a common law agent who materially aids in the acts constituting  
16 the violation, either knowingly or negligently, may, upon notice  
17 and opportunity for hearing, and in addition to any other penalty  
18 provided for by law, be subject to suspension, revocation, or  
19 denial of any registration or license, including the forfeiture of  
20 any application fee, or the imposition of an administrative fine  
21 not to exceed \$2,500, or both. Each of the acts specified shall  
22 constitute a separate violation, and such administrative action or  
23 fine may be imposed in addition to any criminal or civil penalties  
24 imposed.

25

1 **III. RELIEF REQUESTED**

2 The staff of the Department requests the Commissioner take the following  
3 action:

- 4 1. Find as fact the allegations contained in section I of this Staff  
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in  
7 section II of this Staff Petition;
- 8 3. Pursuant to RSA 397-A:17, order each of the above named  
9 Respondents to show cause why their license should not be revoked;
- 10 4. Assess fines and administrative penalties in accordance with RSA  
11 397-A:21, for violations of Chapter 397-A, in the number and  
12 amount equal to the violations set forth in section II of this  
13 Staff Petition; and
- 14 5. Take such other administrative and legal actions as necessary for  
15 enforcement of the New Hampshire Banking Laws, the protection of  
16 New Hampshire citizens, and to provide other equitable relief.

17 **IV. RIGHT TO AMEND**

18 The Department reserves the right to amend this Staff Petition and to  
19 request that the Commissioner take additional administrative action.  
20 Nothing herein shall preclude the Department from bringing additional  
21 enforcement action under RSA 397-A or the regulations thereunder.

22 Respectfully submitted by:

23  
24                   /s/                    
Maryam Torben Desfosses  
25 Hearings Examiner

  05/13/09    
Date